

EXHIBIT 16

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

-----:
BRIAN CARR, et al., :
:
Plaintiffs, :
:
vs. : Cause No.
: 2:14-cv-00001-WTL-MJD
THOMAS R. KANE, ACTING :
DIRECTOR, FEDERAL BUREAU :
OF PRISONS, :
:
Defendant. :
-----:

DEPOSITION OF ERIC LAWTON

DATE: Friday, November 3, 2017
TIME: 9:06 a.m.
LOCATION: O'Melveny & Myers LLP
1625 Eye Street, Northwest
Washington, D.C. 20006
REPORTED BY: Erick M. Thacker, RPR
Reporter, Notary

Veritext Legal Solutions
1250 Eye Street, NW, Suite 350
Washington, D.C. 20005

1 A I mean --

2 Q -- but you-all have not --

3 A -- you saying are they choosing to use
4 it because they're discouraged that they don't
5 think they'll be successful is -- is not an -- if
6 you -- if you have a sincere held belief that
7 this is what I need to do to exercise my
8 religion, you don't go, aw-shucks, I'm not going
9 to try, though, because it's not going to get
10 approved. You have sincere held belief, and you
11 are going to pursue that avenue to see if it gets
12 approved.

13 Q Even if --

14 A And we've seen it. We're here now
15 discussing it because it's been -- it's been
16 used.

17 Q Of course. Of course. But our
18 plaintiffs -- we're now in court because the BOP
19 at every level denied our plaintiffs' requests,
20 stating that the current diet meets their needs.

21 So do you not think it's possible that
22 other inmates may not see that denial and think,

1 well, it's pointless for me to try? You know,
2 we've -- we've seen them. They're actually
3 litigating this case now because the BOP denied
4 it. Is it not possible that other inmates may be
5 discouraged by that fact even if they sincerely
6 believe this?

7 A It is possible.

8 Q Okay. Thank you. Now, let's see here.
9 Do you have any experience -- kind of turning to
10 a different subject matter now, though -- with
11 the CRC-based alternative religious diet?

12 A Define "experience."

13 MS. WOODS: I'll -- I'll object to the
14 form of the question. However, you may answer
15 the question, Mr. Lawton.

16 BY MR. MCDERMOTT

17 Q Well, let me -- let me rephrase.

18 What is your experience with the
19 CRC-based religious diet?

20 A I am aware that there is a level of
21 kosher certification that is called CRC and that
22 we have inmates that have voiced an interest in

1 receiving only that level of certification and
2 said that the other levels don't meet their need.

3 Q Okay.

4 A And we have inmates and institutions
5 that offer that level of kosher certification.

6 Q Do you know how many institutions
7 currently?

8 A Not specifically. I can say that I
9 know of at least four. I know that there are
10 more than that, but I couldn't give you an exact
11 number.

12 Q Okay. Do you know if at any of those
13 institutions whether they serve both the normal
14 religious diet menu and CRC foods, or at each of
15 those institutions, have they transitioned to a
16 full CRC menu for all --

17 A To the best of my knowledge, when they
18 solicit bids, they choose only one, and they
19 specify that they want CRC.

20 Q Okay. And do you have any idea how
21 many Jewish inmates were requesting CRC foods
22 before the decision was made to transition some

1 institutions to a CRC-based diet?

2 A I do not.

3 Q Do you have any idea whether or not it
4 was more than a dozen?

5 A I -- I -- I do not have specifics.
6 That was done prior to me being here.

7 Q Okay. Other than what we've already
8 discussed, do you have any other substantive
9 knowledge regarding the religious diet program or
10 substantive responsibilities regarding that
11 program?

12 A Can you be specific? I don't know
13 what --

14 Q Well, let's put it this way: Can you
15 give me an overview of any other responsibilities
16 that you have regarding the religious diet
17 program other than what we've covered?

18 A I respond to the rabbis when they voice
19 their concerns about the product, the product
20 line, certain vendors, specifications. I guess
21 that would cover it.

22 Q When it comes to creating the menu, do

1 A To the best of my knowledge, our
2 pursuit has been in the main -- having the bread
3 certified doesn't change the -- the ultimate
4 problem. You could say that the bread is and,
5 okay, so now we have the bread problem handled,
6 but we haven't solved the problem because we need
7 to address the center of the plate item, the
8 entree, the meal.

9 Beyond that, all those other things are
10 fringe items that we can address, but until you
11 conquer the first one --

12 Q So you think those fringe items would
13 be pretty easy for you-all to conquer once -- if
14 you -- if you were able to get the center piece
15 handled?

16 A I believe easier, yes.

17 Q Okay. Can you think of any reason why
18 you could not have a halal certifier come in and
19 determine whether or not the current items that
20 you have on the menu --

21 A Well, I think it's an open question in
22 that we don't know which halal. So until --

1 until we understand which halal certification is
2 acceptable to the plaintiffs, we don't -- we
3 can't pursue the possibility of who do we get to
4 come in to certify this and -- and are there
5 obstacles involved in that. We don't know.

6 Q Well, now, when you say until we
7 understand the halal certification acceptable to
8 plaintiffs, you -- you do -- you are aware of
9 plaintiffs' beliefs, correct?

10 A Correct.

11 Q And so what more would you need to know
12 what certification standard is acceptable to
13 them?

14 A From my understanding, we -- we thought
15 we understood what they wanted, and we purchased
16 and provided meals that we felt met their needs.

17 Q The J&M meals?

18 A The J&M meals. And then were told, no,
19 that does not, although it is halal certified.
20 So now what is acceptable halal certification?
21 Is it IFANCA? Is it ISWA? Is it --

22 Q Well, so -- and throughout this

1 litigation, plaintiffs have -- and I believe in
2 their interrogatory responses and other
3 documents, they've laid out their beliefs, you
4 know, and we can review them quickly. You know,
5 it's that the meat must be slaughtered by a sane
6 adult Muslim male. The cut has to be horizontal
7 across the neck.

8 So have you made any attempts to
9 determine whether or not specific certifiers meet
10 those standards?

11 A Have I made attempts to -- we have
12 received documentation from two of the halal
13 certifiers explaining their process. Have we
14 sought out others? No.

15 Q And why not?

16 A I guess that's not completely accurate.
17 We have sought out vendors.

18 Q Right.

19 A So if the vendors have acceptable
20 certifications and we write those requirements in
21 the statement of work for the product that we're
22 pursuing, so I'd say -- I would say, yeah, okay.

1 Q Well, you say if the vendors have
2 acceptable certifications, but you just said that
3 you don't know what the acceptable certifications
4 are. So have you done any research independently
5 to determine what acceptable certifications are
6 out there, what certifications meet the standards
7 that plaintiffs have laid out?

8 A I have not done individual research.

9 Q Is there any reason why you-all have
10 not done individual research like that?

11 MS. WOODS: I'll object to the form of
12 the question. The witness testified that he
13 personally has not conducted independent
14 research.

15 BY MR. MCDERMOTT

16 Q Is there a reason that you personally
17 have not conducted independent research?

18 A Is there a reason that I haven't
19 personally done it? I'm not sure -- I'm not sure
20 how to answer the question, in that we are -- we
21 are researching what's available, but are we
22 researching halal certifications? No. Is there

1 a reason that I'm not researching halal
2 certifications? The reason would be, if it's not
3 available for a vendor, it doesn't matter if it
4 exists.

5 You could say -- you could say Halal
6 World is what we accept, but if there isn't a
7 vendor that has that product, it's irrelevant to
8 me. So instead of preselecting a vendor or
9 preselecting a certifier, we put the
10 specifications of what the plaintiffs require in
11 the statement of work, and if you meet that, then
12 okay. Whatever the name of it is is not
13 relevant.

14 Q Of course. Right. But when it comes
15 to like the Midamar -- I'm sorry -- not the
16 Midamar -- the J&M purchase that the BOP made --

17 A Correct.

18 Q -- in an attempt to satisfy plaintiffs'
19 beliefs --

20 A Correct.

21 Q -- as I understand it, the BOP actually
22 purchased the food, and they intended to serve it

1 to just our four plaintiffs at that time,
2 correct?

3 A I -- that's the way I understand it as
4 well.

5 Q Okay. And so they intended to serve it
6 to our four plaintiffs, but then the plaintiffs
7 rejected that because the certification standards
8 did not meet their needs?

9 A As I understand it, that is correct,
10 but I also understand that at the time that those
11 meals were purchased and offered that the
12 plaintiffs' needs were not defined to exclude
13 those meals or IFANCA.

14 Q Perhaps even assuming that was true, do
15 you not think that if you had performed some
16 outside research to determine whether or not
17 IFANCA met the specific requirements that
18 plaintiffs have laid out that perhaps this could
19 have been avoided?

20 A I would be speculating. That I don't
21 know.

22 Q Are you aware of anyone else in the BOP

1 that has investigated whether or not potential
2 certifiers meet plaintiffs' stated religious
3 beliefs?

4 A Do I know for a fact? No.

5 Q But you are not aware of anyone else
6 having conducted that sort of research?

7 A I don't definitively know that they
8 did. That's correct.

9 Q Right. Yes. You are not aware
10 currently?

11 A Correct.

12 Q Okay. Now -- okay. As it pertains --
13 coming back to --

14 A Let me say, on that last question, I --
15 I am aware that the chaplain reached out to our
16 Bureau imams to get input on what is acceptable
17 halal meals, so what is the definition for halal
18 certification and to provide feedback on our
19 specifications.

20 Q Okay. But she did not inquire as to
21 whether or not they had any experience with
22 specific halal certifiers?

1 wrap at the institution?

2 A What you're suggesting is feasible, but
3 contrary to policy. That's --

4 Q Contrary to the policy that states that
5 it just has to be doubled wrapped?

6 A That it has to be double wrapped and --
7 and that they have to be protected from -- from
8 cross-contact.

9 Q But --

10 A There are -- there are -- there are
11 items that the policy allowed for changing the
12 package. For example, V8 Juice on the menu, the
13 aluminum can be a security issue, so those
14 institutions, that product has to be removed from
15 the aluminum can, put into a single-serve
16 disposable cup, sealed and delivered.

17 And so, worst-case scenario, if you had
18 to figure out how to do something, you know, you
19 could put the single-wrapped item inside a
20 clamshell container and microwave it that way so
21 that the contents is in there, but that would be,
22 you know, one, a situation that I don't think has

1 ever happened and, B, contrary to what we do.

2 Q Okay. And you've just -- you've never
3 had to look for a solution to this problem, it
4 sounds like, correct?

5 A Correct.

6 Q So -- okay. And so you're not aware
7 of -- there may be an easier manner of protecting
8 against this that you're not aware of and that
9 I'm not aware of right now because neither of
10 us -- neither of us have ever had to look into
11 this issue, correct?

12 A Correct. We haven't had to look into
13 it, but we've solved the problem by putting it in
14 the spec that it's double wrapped.

15 Q Okay.

16 A So we've -- we've -- we've had the
17 problem, and we addressed -- addressed the
18 problem by saying, hey, double wrap the entrees.

19 Q Okay.

20 A That was the solution.

21 Q Now, let's see here. Now, what has
22 your level of contact been with the Washington

1 Department of Corrections, CI industry --
2 Correctional Industries out in Washington State
3 that produce --

4 A No contact with them, but with their
5 vendor that distributes their thing from National
6 Food Group, Tracey Komata.

7 Q Okay. And what has your communication
8 with Tracey been regarding their products?

9 A Just e-mails, and it's been to find out
10 whether there's been a resolution to their water
11 problem and their distribution problem.

12 Q Okay. And what are -- what is your
13 understanding of their distribution problem?

14 A The distribution problem is that the
15 Federal Bureau of Prisons has some legal concern
16 with purchasing stuff that's made with inmate
17 labor.

18 Q Are you aware of whether or not a
19 resolution has been reached?

20 A To the best of my knowledge, no, but
21 purchasing isn't my -- you know, isn't my -- my
22 forte.

1 Q When was your last contact with them
2 regarding that issue?

3 A I would say about a month ago.

4 Q A month ago. Okay. Let's see here.

5 A The water problem was -- was resolved,
6 but I hadn't heard from legal or the business
7 office if the distribution problem had been
8 resolved or addressed or a work-around or if it's
9 been just absolutely, nope, can't do it. As far
10 as I know, that's still up in the air.

11 Q Okay. But your last time you reached
12 out regarding that issue was about a month ago?

13 A Correct.

14 Q Okay. And so you're not aware of --
15 you're not currently aware whether anything has
16 since changed?

17 A That's correct.

18 Q Besides the distribution issue, are you
19 aware of anything that would prevent the BOP from
20 ordering this food and serving it to plaintiffs?

21 A It's not double wrapped currently, so
22 we would have to address that problem. We've

1 asked them what the possibility is of having it
2 double wrapped, but the product itself is -- is
3 high quality, and I don't see -- same as -- same
4 as the other vendors. No, I don't see a problem
5 from -- from a food service standpoint.

6 Q Now, before the water issue arose back
7 this past spring --

8 A Correct.

9 Q -- if I'm not mistaken, the BOP had
10 intended to offer these meals and actually did
11 offer them to plaintiffs.

12 Do you know -- were any meals ever
13 actually purchased?

14 A I do not believe any were.

15 Q Okay.

16 A They sent us samples and we -- we
17 photographed, tasted, looked at the samples, but
18 as far as at the institutional level being
19 purchased for inmates, none that I'm aware of.

20 Q Okay. So how did you-all plan to
21 address the single wrapped issue when you --

22 A We --

1 Q -- offered them to plaintiffs?

2 A We had e-mailed Tracey to find out if
3 we can get them double wrapped. The issue beyond
4 that, I'm not aware of.

5 Q Okay. But you intended to handle that
6 issue when it came about since you were actually
7 making an offer to plaintiffs?

8 A Correct.

9 Q Okay. And have you had any phone
10 conversations with Tracey regarding these?

11 A Not personally, no.

12 Q Okay. Just e-mails?

13 A Correct.

14 Q And I know Ms. Stiltner had actually
15 been out to Washington to see their facilities.

16 Have you done anything like that?

17 A No, sir.

18 Q Okay. Can you talk to me a bit about
19 your contact with J&M or with NFG regarding J&M?

20 A J&M -- I believe the meals that were
21 purchased and the -- I was not involved in that
22 at all. And we received e-mails from them, and

1 we received some guidelines on halal foods. They
2 have more than one product line, but the -- the
3 issue from -- kind of from -- for us is that that
4 product is, one, shelf stable, two, a different
5 weight, so -- so as -- that as a long-term
6 alternative is -- is not ideal.

7 Q Okay. I'm just going to pull out a
8 document here. This is Tab 98.

9 MS. RICHARDS: This is Debra Richards.
10 So if you'll just e-mail that to Shelese, and
11 I'll let you know when I've received it and been
12 able to review it.

13 MS. OBEN: Do you want to take a break
14 now?

15 MR. MCDERMOTT: We can actually --
16 yeah. We can take a break now before we get into
17 this, and we'll -- we can start up after the
18 break with this document.

19 (Brief recess.)

20 BY MR. MCDERMOTT

21 Q All right. So back to halal meals and
22 food services. So, before we left, we were

1 talking a bit about CI industries.

2 One thing I just wanted to follow up
3 on: You noted that there were concerns related
4 to the distribution and purchasing of meals from
5 CI industries through NFG?

6 A Correct.

7 Q Do you know what those concerns were
8 more specifically?

9 A To the best of my knowledge, there is
10 some rule regarding the Federal Bureau of Prisons
11 purchasing items that were produced by inmate
12 labor.

13 Q Okay. And do you know whether the BOP
14 is undertaking any steps to try to resolve that
15 issue?

16 A From what I understand, they are
17 investigating or researching whether the fact
18 that we are buying it through National Food
19 Group, not straight from Washington, has an
20 impact in it --

21 Q Okay.

22 A -- and whether or not it can be done.

1 Q Okay. So it's your understanding that
2 it's up in the air right now?

3 A That is my understanding.

4 Q Okay. Okay. And so we were also just
5 about to move on to J&M Foods. And you had
6 stated that they were not an ideal candidate for
7 a couple of reasons. Their meals were off weight
8 and they were shelf stable, not frozen.

9 And now, recently, though, have you
10 been participating in any communications with
11 them or regarding them?

12 A I want to say I recollect them saying
13 they have a new product line, and I have seen
14 photos and products that are frozen meals --

15 Q Okay.

16 A -- but it's under -- it's under -- it's
17 under a different label.

18 Q My Own Meals, perhaps?

19 A Correct.

20 MR. MCDERMOTT: Okay. Now, I wanted to
21 just show you an e-mail here, if we can mark this
22 as Exhibit 2. And this is Tab 98 that we were

1 looking at before we left briefly. Just on the
2 very front --

3 (Plaintiffs' Exhibit Number 2
4 was marked for identification.)

5 MS. RICHARDS: Oh, I'm sorry. I was
6 just going to say, I did get a look at that.

7 Is -- is there two different strings
8 in -- contained in -- in the exhibit?

9 MR. MCDERMOTT: This is the document as
10 it has been produced to us by the BOP. I am
11 unaware as to whether or not there are two
12 strings, but we are only going to be focusing on
13 this very first page, BOP043461.

14 MS. RICHARDS: Okay. Well, then I
15 would just object to that as to -- any questions
16 about the exhibit as to where the witness didn't
17 draft or receive these e-mails.

18 BY MR. MCDERMOTT

19 Q Okay. So, Mr. Lawton, the one thing I
20 just wanted to ask you about this is, you'll see
21 here on Wednesday, June 14th, 2017, about two
22 thirds of the way down the first page, where

1 Q Do you know why that is?

2 A Yes, I do. The inmates use the inmate
3 -- use the aluminum in electrical outlets to brew
4 things in their -- in their cells.

5 Q Okay. Have you reached out to SOPAKCO
6 regarding whether or not they can provide meals
7 that do not contain aluminum?

8 A Personally, no.

9 Q Are you aware of whether or not they
10 can provide meals that do not contain aluminum?

11 A My understanding is that they can, but
12 we haven't received or seen any samples. I
13 believe their last thing was that they would work
14 with us to meet our spec.

15 Q And how long ago was that?

16 A I couldn't give you a date
17 specifically.

18 Q Just an approximation. A month ago,
19 two months ago, three?

20 A A month ago, maybe.

21 Q Okay.

22 A I would say about the time that

1 Chaplain Kugler got the return phone call --

2 Q Okay.

3 A -- then -- yeah, I would say it's about
4 that time.

5 Q Okay. And what has the BOP done since
6 then to continue to work with SOPAKCO or to
7 determine whether or not they can indeed meet
8 those specifications?

9 A What the Bureau has done in the interim
10 is develop a set of specifications to distribute
11 to potential vendors to see if they can meet
12 those specs and provide meals.

13 Q So, as it currently stands, every
14 indication that you have received is that SOPAKCO
15 would be willing to meet the specifications
16 provided by the BOP?

17 A Not every specification, but willing to
18 modify what's currently available to come closer
19 or provide something that doesn't have the
20 heating element.

21 Q So what specifications are they not
22 willing to meet?

1 A I don't know. They haven't
2 responded -- we haven't issued them anything. We
3 haven't gotten a response back. So we don't have
4 a, yes, we can meet every part of this.

5 Q But they -- they've indicated that they
6 are willing to work with you to --

7 A To modify what they currently have,
8 yes.

9 Q Okay. To meet the specifications that
10 you-all put out?

11 A They've -- they have indicated that
12 they're willing to modify what they have. They
13 can't say they're willing to meet the
14 specifications that we're going to put out
15 because they haven't seen them yet.

16 Q Okay. But they're willing to work with
17 you?

18 A Correct.

19 Q Okay. So, as it stands, there is -- as
20 it stands, you do not have a definitive view that
21 they are not a potential vendor that could supply
22 meals?

1 A That is a correct statement.

2 Q Okay. All right. Let's look at
3 Sisters One. It's another vendor that I believe
4 you've had contact with.

5 A Correct.

6 Q Can you just again describe the extent
7 and kind of communications that you've had?

8 A E-mail. And the e-mail indicated that
9 they are a contractor, not a producer, and they
10 actually provide meals that are produced by some
11 of the other people that are on the list. They
12 carry meals from -- from the other vendors.

13 Q Okay.

14 A They're not a producer. They basically
15 subcontract out the meals through the other
16 vendors.

17 Q And have they indicated to you that
18 they could contract for meals that would meet the
19 specifications as well as plaintiffs' beliefs?

20 A I don't recall specifically them saying
21 it, other than that they said they are a
22 contractor. And, of course, they've mentioned

1 the other vendors, so if the other vendors are
2 going to produce the meals, then I guess it
3 stands to reason.

4 MR. MCDERMOTT: Let's see here. One
5 moment. We're going to look at Tab 18. This is
6 going to be marked as Plaintiffs' 3.

7 (Plaintiffs' Exhibit Number 3
8 was marked for identification.)

9 MS. OBEN: Thank you.

10 MS. RICHARDS: I'll let you know as
11 soon as I get that. I'm watching Shelese's
12 e-mail.

13 MR. MCDERMOTT: Okay. And, Mr. Lawton,
14 we're going to be specifically focusing on the
15 end pages of this document, which I think, again,
16 contains multiple threads. Let's see. This is
17 going to be starting on page BOP043279.

18 MS. RICHARDS: I still haven't gotten
19 the e-mail yet.

20 MR. MCDERMOTT: Sorry. It's 43279.

21 MR. HAMMACK: There's multiple
22 documents in here, but it's the one on Bates

1 A Usually revert to policy. What does
2 the -- what does policy say we do? How does it
3 handle -- and -- and, yeah.

4 Q And sometimes policy is tolerant of a
5 disparity?

6 A It's -- that's -- that's a pretty broad
7 statement. If there's a liturgical need, it's in
8 policy and we follow policy.

9 Q So there have been times when an inmate
10 has complained alleging a disparity based on an
11 action that was consistent with policy?

12 A Correct.

13 Q And in that instance, nothing is
14 changed?

15 A I can't say nothing's changed. It's a
16 case-by-case thing. I don't know how every one
17 of them is resolved. I wouldn't say nothing is
18 ever changed or --

19 Q There are at least instances in which
20 the policies continued -- has continued --

21 A The policy didn't change?

22 Q Right.

1 A Correct.

2 Q Okay. Now, going back to Saffron Road,
3 what efforts has the BOP undertaken to determine
4 whether or not they would be willing to alter
5 their tray size or their meal size to bring it up
6 to weight?

7 A I don't recall seeing anything from
8 Saffron Road saying that they would modify that,
9 and their response to the RFI or communication
10 would be through contracting. I saw the response
11 regarding the J&M meals, not Saffron Road, that I
12 remember.

13 Q Okay. Now, you were just saying that
14 you spoke with SOPAKCO about altering their
15 packaging and working with you.

16 So you're not aware, though, of the BOP
17 reaching out to Saffron Road on the BOP's own
18 initiative to see whether or not they would be
19 willing to work with you to alter their --

20 A I don't recall that, no.

21 Q Okay. So, again, as it stands with
22 Sisters One, you are not currently aware of

1 whether or not they could provide food that would
2 meet plaintiffs' beliefs and that would satisfy
3 the BOP's requirements?

4 A Correct.

5 Q Let's turn to Labriute or --

6 A Labriute, yeah.

7 Q Labriute?

8 A I can't pronounce it either. Yeah.

9 Q Can you just go over any communications
10 that you've had with them?

11 A So my communication with Abe at
12 Labriute consisted of a phone call with a
13 follow-up e-mail and a response to that e-mail.

14 Q And when were these communications
15 roughly taking place?

16 A A month ago, maybe.

17 Q Okay. As it -- or is it your
18 understanding that Labriute -- Labriute -- that
19 there is anything preventing them from providing
20 meals that would meet plaintiffs' beliefs and
21 satisfy the requirements of the Bureau of
22 Prisons?

1 A There is not.

2 Q Are you continuing to communicate with
3 them regarding whether or not they would be
4 interested in providing such meals?

5 A Yes. We are waiting for their response
6 at this time.

7 Q Their response to what?

8 A If you see the e-mail that's in that
9 package, Abe writes back, yes, we can comply with
10 this. What is our next step?

11 We sent them a copy of our proposed
12 specs for the RFI and asked about cost and
13 availability and timeline, and we are awaiting
14 his response.

15 Q And when did you send that?

16 A A month ago, maybe, if that, maybe not
17 quite that long. It's --

18 Q And --

19 A It's in this packet. I saw it. Oh,
20 here we go. September 28th.

21 Q Let's see. What -- what page are you
22 looking at there?

1 A 43271. So that communication, it was
2 probably a week or two after that before we sent
3 the follow-up specs and request for information.

4 Q Sorry. I'm not sure I'm following
5 completely. So the September 28th e-mail on page
6 43271 is an e-mail from Abe to you saying that,
7 yes, they can comply with all the requirements?

8 A Correct.

9 Q And asking what their next steps would
10 be?

11 A Correct.

12 Q And so have you communicated with them
13 since this?

14 A We had follow-up questions, and we're
15 waiting for their response.

16 Q So the -- the last e-mail, though, is
17 this top one from Abe. The ones further below
18 are from you at an earlier time. Abe responds to
19 you, saying, yes, we can meet --

20 A No, there's been an e-mail since then.
21 It's not in this packet, but --

22 Q Okay. There has been an e-mail since

1 was marked for identification.)

2 MS. OBEN: Thank you.

3 MS. WOODS: I am waiting on it. I
4 didn't want you to think I was asleep at the
5 switch here.

6 MR. MCDERMOTT: Sounds good.

7 MS. WOODS: This morning our network
8 was down, so luckily we got that resolved.

9 Okay. I have Exhibit 7. Thank you.

10 BY MR. MCDERMOTT

11 Q Okay. So, Mr. Lawton, looking at this
12 e-mail, would you say that it appears to
13 establish -- well, sorry.

14 Let's start this off with: This is an
15 e-mail from Kent Vogel of Midamar --

16 A To me.

17 Q -- to you --

18 A Correct.

19 Q -- dated 10/27/2017?

20 A Correct.

21 Q Now, would you agree that this appears
22 to establish that Midamar can provide meals that

1 meet plaintiffs' beliefs?

2 A It appears, yes. But it also --

3 Q Okay.

4 A -- points out that we need to know what
5 the exact specification is. He indicates that
6 there's some -- some question there. But at the
7 bottom of the last sentence, he says, hey, the
8 specifications that we received, we can meet
9 those specifications, which we've itemized those
10 steps in it. So, yes, it appears that they can
11 meet that specification.

12 Q Right. And so they would just be
13 waiting on whatever final specs that you-all
14 issue as part of your request?

15 A When we change it from a request for
16 information to a request for purchase.

17 Q Correct. Right. So, based on this,
18 would you say that there is -- it is your
19 understanding that Midamar can provide meals that
20 meet both your needs and plaintiffs' beliefs --

21 A Yes.

22 Q -- at this time? Okay.

1 And then -- so we were just recapping
2 the other vendors. After that, we spoke about CI
3 industries, and it was your understanding that
4 they could also provide meals that meet
5 plaintiffs' beliefs and that there is an issue
6 with regards to whether or not the BOP can
7 currently purchase those meals, but the BOP is
8 conducting research into whether or not it can do
9 so?

10 A That is my understanding, correct.

11 Q Okay. And when it comes to SOPAKCO,
12 again, it was your understanding that they could
13 provide food that meets plaintiffs' beliefs and
14 that BOP -- and that meet the BOP's needs to an
15 extent, correct?

16 A Correct. To an extent.

17 Q And --

18 A And they're willing to work with us to
19 modify to potentially meet the spec in full.

20 Q And pending that, they may be able to
21 provide meals that meet everybody's needs?

22 A That is correct.

1 Q And, again, when it comes to Sisters
2 One, you are not currently aware of whether or
3 not they can provide meals that meet both
4 plaintiffs' needs and the BOP's, but it is
5 possible?

6 A That is correct.

7 Q And with Labriute, it is your
8 understanding that they can provide meals that
9 meet both your specs and plaintiffs' beliefs
10 based on their representations?

11 A That is correct.

12 Q Okay. Oh, and one more. Taaza Fresh,
13 can you describe your communications with them?

14 A E-mail requesting follow-up information
15 to the RFI.

16 Q Okay. And what dates has your -- have
17 your communications to them ranged over?

18 A I would say from July forward.

19 Q Of this year?

20 A Correct.

21 Q Is it your understanding that they too
22 can provide meals that meet plaintiffs' beliefs

1 and the BOP's requirements?

2 A I don't believe we have enough
3 information to determine whether they can or
4 can't at this point.

5 Q What information are you in need of?

6 A I'm doing this from memory, but from
7 what I understand, we sent several communications
8 to Taaza Fresh and got no response from the
9 e-mail that we had, and I believe the one reply
10 that we got indicated that they were a -- not
11 necessarily a vendor, but a producer, a
12 repackager, and so I don't think it clarified
13 whether they could provide something that met our
14 needs or not.

15 I wouldn't say that they're excluded,
16 that they -- that it can't be done, but I don't
17 know if we have enough information to say that
18 they definitely can.

19 Q Okay. And when was your last
20 communication with them?

21 A Over a month ago.

22 Q And have you made any other attempts to

1 contact them? Have you tried calling them or
2 anything --

3 A I --

4 Q -- like that?

5 A I have not.

6 Q Are you aware of anyone else having
7 done so?

8 A I do not know whether the business
9 office or anybody else has tried to solicit more
10 information.

11 Q You said that you didn't receive a
12 response from them?

13 A Not to the initial e-mails. And I want
14 to say, at one point, we got an undeliverable
15 thing saying that the e-mail address was
16 incorrect or no longer valid. It was like Faisal
17 (phonetic) at -- there was -- there was some
18 problem with that e-mail at some point during --

19 Q Okay. And have you confirmed whether
20 or not he could have sent anything to that other
21 address that you were having issues with?

22 A I do not know whether he did or not.

1 Q Okay. So it's possible that he has
2 been trying to communicate?

3 A It's possible.

4 Q And you are unaware of any attempts by
5 the BOP to establish communications with him
6 beyond e-mail?

7 A Correct. I do not know.

8 Q So, as it stands, he may be able to
9 provide meals, but you're unaware of whether or
10 not that is the case at this time?

11 A Correct.

12 Q Now, a minute ago, you mentioned -- you
13 were talking about one of the vendors, and you
14 said, you know, there's a difference between a
15 request for information and a request for
16 purchase, right?

17 A Correct.

18 Q Do you have an understanding as to why
19 a request for purchase has never been issued?

20 A I would be speculating.

21 Q So you don't have any personal
22 knowledge as to that process?

1 A I have a limited understanding of how
2 that works. As I understand it, you have to do a
3 request for information to determine if what
4 you're seeking is available anywhere on the open
5 market, and if there's competition, you can do a
6 request for purchase and provide your
7 specifications to the market to see if you get a
8 response or solicitation.

9 Q Now, isn't it true, though, that some
10 vendors would be more motivated to come out and
11 participate in a request for purchase because
12 they see that as an actual viable contract is at
13 stake, whereas, opposed to an RFI that's just
14 kind of putting information out into the void?

15 Have you encountered that mentality?

16 A I have heard of that, but I can't speak
17 to it. You know, I don't do contracting. But I
18 have heard people say that.

19 Q So it's all to say that it's possible
20 that there are other vendors out there that have
21 not contacted you, but which may be willing and
22 able to provide meals that meet both your

1 not handling food well, are those handled in a
2 similar manner?

3 A It depends again on the institution.
4 If you're -- if you are at an institution that
5 has an open compound and you're serving mainline,
6 then intolerances are addressed by
7 self-selection. Hey, if you know that doesn't
8 agree with you and you go to mainline, pick the
9 other entree, not the one that doesn't agree with
10 you.

11 Q Okay.

12 A If you are at a high-rise in
13 segregation somewhere where they're doing
14 single-plated satellite service --

15 Q Right.

16 A -- then it's handle differently.

17 Q And how is it handled in that
18 situation?

19 A Then it would be back to the -- here,
20 the person has a diet prescription or has a
21 thing, and we make him a tray specifically to
22 meet his need.

1 Q Okay. Now, are there ever instances
2 where inmates receive more food than other
3 inmates, for instance, somebody who's underweight
4 needing a high caloric diet?

5 A Have they been prescribed? Yes.

6 Q Okay. And I assume, with diabetics,
7 they also receive snacks that other inmates don't
8 generally receive?

9 A If they are an insulin diabetic, they
10 receive a diabetic snack, so not all diabetics.
11 Just being diabetic doesn't automatically qualify
12 you for a snack.

13 Q Okay.

14 A Insulin diabetics, yes.

15 Q Okay. And the institutions are able
16 and capable to handle the provision of those
17 extra foods to those inmate without issue?

18 A Yes.

19 Q Okay. And on a high caloric diet,
20 what -- what does that mean, you know, when
21 somebody might need more calories than the
22 average inmate? What does that relate to? I

1 mean, are they allowed to take an extra portion?

2 Are they --

3 A I've seen it --

4 Q How is that handled?

5 A I've seen it done differently based on
6 the -- either the dietician's recommendation, the
7 doctor's recommendation, the clinical directors.
8 Some have -- say, you know, double the starch.
9 Some have said increase the entree, you know,
10 double entrees. They're pretty rare, actually --

11 Q Okay.

12 A -- because the calories provided in our
13 normal diet is over the recommended daily
14 calories.

15 Q Right. But it's not unheard of?

16 A It's not unheard of, but the fact of
17 the matter is, the majority of our inmate
18 population is overweight, not underweight. When
19 we do see increased calories, it's usually based
20 on another medical condition.

21 Q Okay. And -- well, we can cover
22 nutrition in a bit, but I guess I do have just

1 one question that kind of relates to that.

2 When you're looking at the caloric
3 intake -- intake of an inmate or how their meals
4 are -- are doled out, I guess it's all very
5 standardized, so you're not taking into account
6 the variation in body mass or how much an inmate
7 may work out or require more or less nutrients.
8 I mean, it's all standardized across the
9 population for the most part unless it's a
10 prescribed medical diet?

11 A Correct. It's standardized based on
12 the -- and I'm not the chief dietician, so, you
13 know, I couldn't give you exact numbers, but it's
14 standardized across that -- you know, the
15 majority of our inmate population is males
16 between the ages of -- you know, they're adult
17 males, so that's the -- the RDIs that we base
18 our -- our nutrition goals on.

19 Q Well, now, but -- so, I mean, for
20 instance, you are training for this Murphy
21 marathon, right?

22 A Right.

1 after the deposition.

2 MR. MCDERMOTT: Okay.

3 BY MR. MCDERMOTT

4 Q Now, what about when it comes to
5 medical diets and some of the other special diets
6 that we were just speaking about? Do you have
7 any way to break down the costs associated with
8 those?

9 A No.

10 Q Okay. But it's fair to say that some
11 of them would likely be more expensive than --

12 A Yes.

13 Q -- other options?

14 A Yes, that's correct. Some of them are
15 less expensive, also. If somebody goes on a
16 liquid diet --

17 Q Right.

18 A -- that costs next to nothing to put
19 out.

20 Q Right. Okay. So I think we've -- we
21 can agree, though, that there is some variance
22 between institutions and between the per capita

1 meal costs an inmate will receive generally, be
2 it because he's on mainline or certified
3 religious diet or because of the geographic
4 location of the institutions?

5 A That is a true statement.

6 Q Okay. Now, when it comes to the
7 outreach that you've been doing to vendors
8 related to this case and your attempts to
9 accommodate the plaintiffs in this case, their
10 beliefs, have you ever declined to work with or
11 consider or stopped analyzing a vendor based on
12 the cost of their meals?

13 A No.

14 Q Is that -- is the cost of the meals
15 factored into your analysis at all?

16 A That's more complicated than -- so
17 we're talking about two different things. A is
18 accommodating four inmates right now --

19 Q Right.

20 A -- and the answer to that is no. Cost
21 has not been a factor in the food service portion
22 of the evaluation.

1 Q Okay.

2 A Side B is like you mentioned at the
3 beginning of our conversation, that there is
4 potentially more inmates out there that would
5 want halal certified meals, and so from a
6 perspective of providing a halal meal Bureau-wide
7 as part of our certified foods component, then it
8 would come under our purchasing, which is based
9 on lowest bidder. So, yes, price would be a
10 factor.

11 Q Okay.

12 A Not -- not in determining whether it
13 was offered, but which vendor was awarded the
14 bid, whether it's on a quarterly basis, weekly
15 basis, five-year contract.

16 Q So of the vendors that met the specs
17 that you put out --

18 A Correct. Whoever --

19 Q -- you would then --

20 A -- had the lowest price is --

21 Q -- consider -- okay.

22 A -- is going to get awarded the -- the

1 A Correct.

2 Q -- cognizant of the costs? Okay.

3 Now, one other topic that I wanted to
4 touch base on, nutrition. Now, I know you've
5 said you're not the chief dietician, but can you
6 just enlighten me as to how your day-to-day
7 responsibilities touch on nutrition, the
8 nutritional guidelines, the Department of
9 Agriculture's guidelines for daily intake?

10 A My personal responsibility is very
11 little other than, if I'm asked, I know who to
12 refer them to --

13 Q Okay.

14 A -- you know. And if -- and if somebody
15 inquires how we came up with our numbers or where
16 they can find the nutritional data, I can direct
17 them in the right location. Some of it we make
18 available on our internal website. Some of
19 it's -- you know, we can direct them to where
20 it's posted for the USDA or so forth.

21 Q So is it fair to say that you don't
22 have any personal knowledge regarding the

1 development of the nutritional standards that the
2 BOP uses or the implementation of those
3 standards?

4 A That would be an accurate statement.

5 Q Okay. Now, I had a few points -- we're
6 going to have to circle back here to some of the
7 conversations we had earlier, but a few points I
8 just wanted to follow up on.

9 I believe when we were speaking about
10 SOPAKCO, a few hours ago now, you mentioned that
11 they were just waiting on you-all now to send
12 specs and that they were potentially going to
13 work with you to accommodate whatever specs you
14 issued?

15 A Correct.

16 Q When it comes to the specs that the BOP
17 is developing, can you speak to that at all, what
18 kind of specs are currently being developed and
19 what that process --

20 A Sure.

21 Q -- looks like?

22 A So the current version of the specs --

1 and, again, this is to go, you know, with plan B
2 to offer this to -- agency-wide upon approval by
3 the executive staff -- is based on what we
4 currently offer the Jewish inmates. What can
5 you -- can you provide something as similar as
6 possible to this, only that's certified halal and
7 meets these halal specifications --

8 Q And when you say --

9 A -- versus --

10 Q -- "these halal specifications," you
11 mean the ones that plaintiffs have laid out?

12 A Right.

13 Q Okay.

14 A Itemized ones. And we -- we took those
15 specs that were already done and we routed them
16 through religious services, because, again, food
17 service is not the subject matter expert on
18 religious accommodation.

19 Q Right.

20 A So we develop a spec based on this is
21 what we have, this is how many ounces of chicken,
22 this is how many ounces of beans, this is how

1 many green beans, this is the corn, and we
2 presented those to Chaplain Kugler. She routed
3 those through her Bureau imams, and they provided
4 input on the specs, saying, hey, instead of
5 saying alcohol, say mind altering, instead of
6 saying this, say that, and that's the current
7 version of the specs that -- that we're working
8 on.

9 Q Okay. And when does BOP anticipate
10 having that -- those specs completed and ready to
11 be issued?

12 A The specs are completed, but if we're
13 talking -- like I said, this is Bureau-wide
14 implementation -- it has to be approved by the
15 executive staff, and the next executive staff
16 meeting is in January.

17 Q And so how do -- how do these specs
18 relate to your attempts to accommodate the four
19 plaintiffs specifically at issue in this case?

20 A Because what the plaintiffs have
21 requested, as far as I understand, is reflected
22 in those specs, so if we can find a vendor that

1 can produce that, it can be rolled out to those
2 four inmates now and easy transition to
3 Bureau-wide if the executive staff approves it
4 versus we come up with something, we offer it to
5 four inmates, then come up with something
6 different to offer the rest of the agency and
7 then have to go back to the first four inmates
8 and go, hey, we want to change your thing or
9 continue to serve you something totally different
10 than we're serving the rest of the inmate
11 population, which again creates problems.

12 Q Right. Okay. So -- but as it stands
13 now, the vendors that are maybe willing to work
14 with you to change their product lines, such as
15 SOPAKCO or possibly --

16 A Midamar --

17 Q -- Sisters One --

18 A -- or -- right.

19 Q Yeah. They -- well, scratch that.

20 Is there a means by which those kinds
21 of vendors could provide or could know what type
22 of accommodations you need in the meantime? That

1 is, if you wanted to start serving something to
2 these plaintiffs --

3 A As -- as I understand it, the business
4 office is the next as far as approving those
5 specs and submitting them, because, ultimately,
6 whether it's for those four inmates or for the
7 entire agency, the actual purchasing is done at a
8 local level. It doesn't come out of my budget.
9 I don't have a budget for food.

10 Q Right.

11 A It's going to be purchased locally, and
12 so they would submit it out for bid at the local
13 level. So our -- our goal is, hey, let's develop
14 a specification so that it can be put out for bid
15 at the local level.

16 Q Okay. So let me understand this. So,
17 right now, you've developed specs?

18 A Correct.

19 Q And those specs need executive
20 approval?

21 A To -- to implement Bureau-wide, yes.

22 Q And then after they get executive

1 approval, they will be sent to the business
2 office, or is that beforehand?

3 A Two different -- two different
4 scenarios. Business office is for approval to
5 accommodate four inmates.

6 Q Okay.

7 A Executive staff is to accommodate and
8 institute halal meal accommodation Bureau-wide.

9 Q Okay. Okay. So have these specs been
10 sent to the business office for approval to
11 accommodate the four inmates, the four plaintiffs
12 at issue?

13 A No.

14 Q Why not?

15 A I received them yesterday. I have a
16 meeting with Chaplain Kugler tomorrow, and we'll
17 proceed from there.

18 Q Okay. That's good to know.

19 A We received the feedback from the imams
20 and edited the specs with those -- with that
21 input, and that's where it sits right now.

22 Q Okay. So what is your next step after

1 A Normally a day or so.

2 Q Okay. It also says on the witness list
3 that you may testify regarding the purchase of
4 food for inmates.

5 Does your knowledge there encompass
6 anything other than what we've already discussed
7 today?

8 A No.

9 Q Okay. It says here that you may
10 testify regarding attempts to accommodate the
11 plaintiffs' religious beliefs and the beliefs of
12 other BOP inmates.

13 Does your knowledge here encompass
14 anything other than what we've discussed already
15 here today?

16 A I don't believe so, no.

17 Q Okay. And it says you may testify
18 regarding food services policy.

19 Is there anything relevant to food
20 service policy that is also relevant to this case
21 which we have not discussed here today?

22 A Not that occurs to me.

1 MS. WOODS: I'm going to object to the
2 form of the question on the basis that it calls
3 for a legal conclusion about what is relevant for
4 trial. However, you may answer the question,
5 Mr. Lawton.

6 BY MR. MCDERMOTT

7 Q Okay. And one final point that I just
8 wanted to recap on. We were talking about the
9 vendors earlier and specifically the double
10 wrapping issue of certified meals.

11 A Okay.

12 Q You noted that it's really important to
13 have the meals double wrapped because you
14 indicated that it's important to represent to the
15 inmates that it's not just me, you know, a BOP
16 guy saying this meal didn't touch anything, but
17 we've got an outside agency that's come in and,
18 you know, they've certified this as being kosher
19 or halal or whatever it is?

20 A Correct.

21 Q I just want to get your take on why is
22 it important to have that third party involved as

1 opposed to saying, take our word for it, take the
2 BOP's word for it that this is --

3 A As I've said, being a food service
4 employee does not make you an expert in religious
5 diet accommodation, so the fact that somebody who
6 is is certifying that this meets somebody's
7 religious dietary needs is -- is important.

8 Q Okay. Okay. So it's your
9 understanding that the BOP just doesn't have the
10 capabilities necessary to do this on their own?

11 A I don't --

12 Q The expertise --

13 A I don't think we want to be the
14 certifying agency. I don't think we want that
15 responsibility. I don't think we want to give
16 that impression that, hey, you know, we're the
17 only restaurant in town, you have to come eat
18 with us, and take our word for it, this is
19 kosher. You know what I mean?

20 Q Right. And even if the BOP had wanted
21 to do that, it's your understanding that they
22 just don't have the expertise as it currently

1 stands to be --

2 A I don't think you have it at every
3 single institution. Obviously, we have imams
4 that work for the Bureau that are in the agency
5 that are at institutions that can give us
6 information, feedback on a Bureau-wide thing, but
7 they're not at every institution.

8 So, you know, Chaplain Jamiu cannot
9 leave Philadelphia and go to Fairton, Fort Dix,
10 you know, everywhere else and go, yeah, this is
11 good, yeah. No. We just do not have the
12 personnel to -- to go certify meals at every
13 institution in our -- in our agency.

14 Q And it's also equally plausible that
15 Jamiu is not an expert in halal certification
16 even if he is a Muslim, right --

17 A That is --

18 Q -- just as every --

19 A -- possible. Correct.

20 Q Yes. Okay.

21 A He's certainly -- he's certainly more
22 qualified to speak on halal accommodation than I

CERTIFICATE OF NOTARY PUBLIC

I, ERICK M. THACKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotype and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



ERICK M. THACKER

Notary Public in and for the
District of Columbia

My commission expires:

June 14, 2019